



U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

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prevent clearly unwarranted
invasion of personal privacy**

File:

Office: Texas Service Center

Date: JAN 14 2003

IN RE: Petitioner:
Beneficiary:

Petition: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. 1153(b)(2)

IN BEHALF OF PETITIONER: SELF-REPRESENTED

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Wiemann
Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Texas Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be sustained and the petition will be approved.

The petitioner seeks classification pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1153(b)(2), as a member of the professions holding an advanced degree. The petitioner asserts that an exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States. The director found that the petitioner qualifies for classification as a member of the professions holding an advanced degree but that the petitioner had not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

Section 203(b) of the Act states in pertinent part that:

(2) Aliens Who Are Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability. --

(A) In General. -- Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

(B) Waiver of Job Offer.

(i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirement of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

The petitioner holds a Ph.D. in organic chemistry from Tohoku University. The petitioner's occupation falls within the pertinent regulatory definition of a profession. The petitioner thus qualifies as a member of the professions holding an advanced degree. The remaining issue is whether the petitioner has established that a waiver of the job offer requirement, and thus a labor certification, is in the national interest.

Neither the statute nor Service regulations define the term 'national interest.' Additionally, Congress did not provide a specific definition of 'in the national interest.' The Committee on the Judiciary merely noted in its report to the Senate that the committee had 'focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . .' S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

Supplementary information to Service regulations implementing the Immigration Act of 1990 (IMMACT), published at 56 Fed. Reg. 60897, 60900 (November 29, 1991), states:

The Service believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the 'prospective national benefit' [required of aliens seeking to qualify as 'exceptional.']. The burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

Matter of New York State Dept. of Transportation, 22 I&N Dec. 215 (Comm. 1998), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, it must be shown that the alien seeks employment in an area of substantial intrinsic merit. Next, it must be shown that the proposed benefit will be national in scope. Finally, the petitioner seeking the waiver must establish that the alien will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications.

It must be noted that, while the national interest waiver hinges on *prospective* national benefit, it clearly must be established that the alien's past record justifies projections of future benefit to the national interest. The petitioner's subjective assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The inclusion of the term 'prospective' is used here to require future contributions by the alien, rather than to facilitate the entry of an alien with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative.

We concur with the director that the petitioner works in an area of intrinsic merit, organic chemistry. The director further concluded that because the petitioner had not established that his research "had an effect on the field in general or on the nation," the petitioner had not established that the proposed benefits of his work would be national in scope. We find that these concerns are more applicable to the final prong. We find that the *proposed* benefits of his work, improved treatment of drug abuse, would be national in scope. It remains, then, to determine whether the petitioner will benefit the national interest to a greater extent than an available U.S. worker with the same minimum qualifications.

Eligibility for the waiver must rest with the alien's own qualifications rather than with the position sought. In other words, we generally do not accept the argument that a given project is so important that any alien qualified to work on this project must also qualify for a national interest waiver. At issue is whether this petitioner's contributions in the field are of such unusual significance that the petitioner merits the special benefit of a national interest waiver, over and above the visa classification he seeks. By seeking an extra benefit, the petitioner assumes an extra burden of proof. A petitioner must demonstrate a past history of achievement with some degree of influence on the field as a whole. *Id.* at 219, note 6.

Dr. Yoshinori Yamamoto, the petitioner's professor at Tohoku University, provides praise of the petitioner's skills and discusses the importance of synthetic organic chemistry in general. Dr. Yamamoto provides:

As a synthetic chemist, [the petitioner's] remarkable research works on palladium catalyzed hydrocarbonation, hydrocarboxylation and hydrosulfination of allenes open up a new era for C-C, C-N, C-O, and C-S bond formation reactions. All of his novel publications in the international journals are significantly useful for developing the chemistry field.

Dr. Yamamoto concludes that the petitioner's expertise in the field will benefit the United States. Dr. Vladimir Gevorgyan, a former professor at Tohoku University, provides similar information. Dr. Gevorgyan also provides information on the petitioner's work after leaving Tohoku University, writing:

He worked for National Science Foundation (NSF) project at Montana State University, MT, where he developed a new catalytic system for C-P bond formation reaction, which he had successfully applied for a P-chirogenic phosphine synthesis. Currently he is working on the project funded by NIDA (National Institute of Drug Abuse) on cannabinoid chemistry at the Research Triangle Institute, RTP, NC. This is a very timely work for an anti-drug revolution and it is very significant for the interest of the United States of America.

In a separate letter, Dr. Yamamoto asserts that the petitioner refereed three papers submitted for publication in *Tetrahedron Letters*, of which Dr. Yamamoto is the regional editor. As Dr. Yamamoto was both the petitioner's professor and the editor of the publication, it is not particularly significant that the petitioner served as a reviewer of articles submitted for publication.

The petitioner also submitted letters from his current colleagues at the Research Triangle Institute (RTI) where he is a postdoctoral chemist. Dr. F. I. Carroll, the vice-president of chemistry and life sciences at RTI, asserts that the petitioner is performing "smartly" at RTI, synthesizing anandamide analogs by applying many new methodologies. Dr. Mansukh Wani, a principal scientist at RTI, recounts the petitioner's employment and educational history and asserts that the petitioner's work on cannabinoid chemistry involving the synthesis of ring-constrained anandamide analogs is important and significant in the field of medicinal chemistry. Dr. Herbert Seltzman of RTI provides general praise of the petitioner's experience.

In response to the director's request for additional documentation regarding the importance of the petitioner's personal contributions, the petitioner submitted two additional letters. In his second letter, Dr. Seltzman merely states that the petitioner's experience in drug abuse research is important to the national interest. Dr. Tom Livinghouse, a professor at Montana State University, asserts that during the petitioner's collaboration with Dr. Livinghouse, they completed research that appeared in two publications. The first article "described a new approach for the synthesis of

racemic phosphine-boranes via a Pd(0)-Cu(I) cocatalyzed cross-coupling procedure.” The second article “demonstrated that this catalytic protocol could readily be extended to the synthesis of enantioenriched phosphine-boranes of >99% optical purity.”

On appeal, the petitioner submitted a third letter from Dr. Seltzman asserting that the petitioner is an “essential contributor” to his current efforts funded by the National Science Foundation and the National Institutes of Drug Abuse.

Of more significance, the petitioner submitted a new letter from Dr. Wani that explains in more detail the nature of the petitioner’s work. Dr. Wani provides:

In his work on cannabinoid chemistry, [the petitioner] is synthesizing ring-constrained anandamide analogs successfully. Because marijuana is a widely-used drug and the cannabinoid receptor system appears to be the most abundant, at least in the brain, it is hypothesized that the endocannabinoid anandamide is known to mimic the actions of THC, the active ingredient in marijuana, by activating cannabinoid receptors (Cnrs), and also to have actions independent of Cnr activation. It appears that Cnr polymorphisms may contribute to the susceptibility to drug abuse and other mental disturbances. [The petitioner] already has made some compounds which may appear as medicines in the field of medicinal chemistry. His scientific knowledge and experience is impressive. His achievement is indicative of his outstanding ability and expertise in the field of organic chemistry and medicinal chemistry. He has developed many methodologies which open a new era for allene chemistry.

Dr. Marie Francisco, a chemist at RTI, asserts that the petitioner’s work on palladium metal catalysts “represents a scientific breakthrough” and will “facilitate the synthesis of compounds, such as those needed to combat the detrimental effects of drug abuse.”

In addition, the petitioner submitted his membership card for the American Chemical Society (ACS). The petitioner has not submitted any evidence that ACS has restrictive membership requirements that would make membership noteworthy.

While the above letters from the petitioner’s immediate circle of colleagues and the petitioner’s membership in ACS are not sufficient evidence of the petitioner’s influence on the field, the petitioner also submitted his published articles. The Association of American Universities’ Committee on Postdoctoral Education, on page 5 of its *Report and Recommendations*, March 31, 1998, set forth its recommended definition of a postdoctoral appointment. Among the factors included in this definition were the acknowledgement that “the appointment is viewed as preparatory for a full-time academic and/or research career,” and that “the appointee has the freedom, and is expected, to publish the results of his or her research or scholarship during the period of the appointment.” Thus, this national organization considers publication of one’s work to be “expected,” even among researchers who have not yet begun “a full-time academic and/or research career.” This report reinforces the Service’s position that publication of scholarly articles

is not automatically evidence of influence; we must consider the research community's reaction to those articles.

The petitioner provided a citation index for his articles. The index reveals that of the twelve articles that have been cited, one has been cited 11 times, three articles have been cited between 21 and 27 times, and a final article has been cited 71 times. The petitioner submitted several of the articles, two of which are reviews of new research in the field. One review article cites the petitioner's work eight times and another review article cites the petitioner's work ten times. We do not agree with the director's implication that this citation history is typical of similarly educated researchers in the field of chemistry. Rather, this citation history is significant and is objective evidence supporting the otherwise unsupported conclusions by the petitioner's colleagues that the petitioner's work has been influential.

It does not appear to have been the intent of Congress to grant national interest waivers on the basis of the overall importance of a given field of research, rather than on the merits of the individual alien. That being said, the above testimony, and further testimony in the record, establishes that the community recognizes the significance of this petitioner's research rather than simply the general *area* of research. The benefit of retaining this alien's services outweighs the national interest which is inherent in the labor certification process. Therefore, on the basis of the evidence submitted, the petitioner has established that a waiver of the requirement of an approved labor certification will be in the national interest of the United States. As such, the petitioner has overcome the basis of the director's decision.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, U.S.C. 1361. The petitioner has sustained that burden. Accordingly, the decision of the director denying the petition will be withdrawn and the petition will be approved.

ORDER: The appeal is sustained and the petition is approved.